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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 DYLAN JAMES DOWNEY,) CASE NO.: C08-0490-RAJ
09)
Petitioner,)
10)
v.) REPORT AND RECOMMENDATION
11)
WASHINGTON STATE DEPARTMENT)
OF CORRECTIONS,)
12)
Respondent.)
13 _____)

14 Petitioner Dylan James Downey is currently incarcerated at the Snohomish County Jail in
15 Everett, Washington where he is serving a term of confinement imposed by the Washington
16 Department of Corrections as a sanction for violations of conditions of his prior release. He has
17 filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 in which he identifies four
18 grounds on which he believes he is entitled to relief from his current confinement.

19 The United States Supreme Court has made clear that state remedies must first be
20 exhausted on all issues raised in a federal habeas corpus petition. *Rose v. Lundy*, 455 U.S. 509
21 (1982); 28 U.S.C. §2254(b), (c). The exhaustion requirement is not deemed satisfied until
22 petitioner demonstrates that each of his federal claims has been presented to the state's highest

01 court or that no state remedy is available. *Batchelor v. Cupp*, 693 F.2d 859, 863 (9th Cir. 1982).
02 The exhaustion requirement is a matter of comity, intended to afford the state courts "the first
03 opportunity to remedy a constitutional violation." *Sweet v. Cupp*, 640 F.2d 233, 236 (9th Cir.
04 1981).

05 It appears from the face of the petition that petitioner has never presented any of his federal
06 habeas claims to this state's highest court for review. Petitioner's federal habeas claims are
07 therefore unexhausted. Accordingly, this Court recommends that petitioner's federal habeas
08 petition be dismissed without prejudice. This Court further recommends that petitioner's
09 application to proceed *in forma pauperis* be denied as moot. A proposed order accompanies this
10 Report and Recommendation.

11 DATED this 14th day of April, 2008.

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13 Mary Alice Theiler
14 United States Magistrate Judge
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